

(Pub. L. 93-400, §23, as added Pub. L. 103-355, title VI, §6002(a), Oct. 13, 1994, 108 Stat. 3363.)

#### PRIOR PROVISIONS

A prior section 419, Pub. L. 93-400, §23, formerly §21, as added Pub. L. 98-369, div. B, title VII, §2732(a), July 18, 1984, 98 Stat. 1198; renumbered §23, Pub. L. 98-577, title III, §301(a), Oct. 30, 1984, 98 Stat. 3074, related to annual report to be submitted to Congress by agency heads concerning actions taken to increase competition for contracts and reduce number and dollar value of noncompetitive contracts, prior to repeal by Pub. L. 103-355, title I, §1092.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

#### REQUIREMENT FOR GUIDANCE AND REGULATIONS

Section 6002(b) of Pub. L. 103-355 provided that: “The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

“(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

“(2) provide guidance and promulgate regulations regarding—

“(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

“(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

### § 420. Repealed. Pub. L. 103-355, title II, § 2191, Oct. 13, 1994, 108 Stat. 3315

Section, Pub. L. 93-400, §24, as added Pub. L. 99-234, title II, §201, Jan. 2, 1986, 99 Stat. 1759; amended Pub. L. 100-679, §12, Nov. 17, 1988, 102 Stat. 4070, related to limits on allowable travel expenses of Government contractors.

## § 421. Federal Acquisition Regulatory Council

### (a) Establishment

There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the “Council”) to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

### (b) Membership

(1) The Council shall consist of the Administrator for Federal Procurement Policy and—

(A) the Secretary of Defense,

(B) the Administrator of National Aeronautics and Space; and

(C) the Administrator of General Services.

(2) Notwithstanding section 205(d) of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 486(d)], the officials specified in subparagraphs (A), (B), and (C) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official (A) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not

lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Technology; or (B) if no official of such agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 414(3) of this title. No other official or employee may be designated to serve on the Council.

### (c) Functions

(1) Subject to the provisions of section 405 of this title, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451, et seq.), shall jointly issue and maintain in accordance with subsection (f) of this section a single Government-wide procurement regulation, to be known as the “Federal Acquisition Regulation”.

(2) Any other regulations relating to procurement issued by an executive agency shall be limited to (A) regulations essential to implement Government-wide policies and procedures within the agency, and (B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) The Administrator, in consultation with the Council, shall ensure that procurement regulations promulgated by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies set forth in section 401 of this title or any policies issued pursuant to section 405(a) of this title.

(4)(A) Under procedures established by the Administrator, a person may request the Administrator to review any regulation relating to procurement on the basis that such regulation is inconsistent with the Federal Acquisition Regulation.

(B) Unless the request is frivolous or does not, on its face, state a valid basis for such review, the Administrator shall complete such a review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation should otherwise be revised to remove an inconsistency with any policies issued under section 405(a) of this title or the policies set forth in section 401 of this title, the Administrator shall rescind or deny the promulgation of the regulation or take such other action authorized under section 405 of this title as may be necessary to remove the inconsistency. If the Administrator determines that such a regulation, although not inconsistent with the Federal Acquisition Regulation or such policies, should be revised to improve compliance with such Regulation or policies, the Administrator shall take such action authorized under section 405 of this title as may be necessary and appropriate.

(6) The decisions of the Administrator shall be in writing and made publicly available. The Administrator shall provide a listing of such decisions in the annual report to Congress required by section 407 of this title.

**(d) Additional responsibilities of membership**

Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to subsection (b) of this section shall—

(1) approve or disapprove all regulations that are, after 60 days after November 17, 1988, proposed for public comment, promulgated in final form, or otherwise made effective by such agency relating to procurement before such regulation may be promulgated in final form, or otherwise made effective, except that such official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(2) carry out the responsibilities of such agency set forth in chapter 35 of title 44 for each information collection request (as that term is defined in section 3502(11) of title 44) that relates to procurement rules or regulations; and

(3) eliminate or reduce (A) any redundant or unnecessary levels of review and approval, in the procurement system of such agency, and (B) redundant or unnecessary procurement regulations which are unique to that agency.

The authority to review and approve or disapprove regulations under paragraph (1) of this subsection may not be delegated to any person outside the office of the official who represents the agency on the Council pursuant to subsection (b) of this section.

**(e) Governing policies**

All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies of section 401 of this title and the policies prescribed under section 405(a) of this title.

**(f) General authority with respect to FAR**

Subject to section 405(b) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, and issuance of and changes in, the Federal Acquisition Regulation.

**(g) Reports**

The Administrator for Federal Procurement Policy shall—

(1) publish a report within 6 months after November 17, 1988, and every 6 months thereafter relating to the development of procurement regulations to be issued in accordance with subsection (c) of this section;

(2) include in each report published under paragraph (1)—

(A) the status of each such regulation;

(B) a description of those regulations which are required by statute;

(C) a description of the methods by which public comment was sought with regard to each proposed regulation in accordance with section 418b of this title, and to the extent appropriate, sections 3504(h) and 3507 of title 44;

(D) regulatory activities completed and initiated since the last report;

(E) regulations, policies, procedures, practices, and forms that are under consideration or review by the Office of Federal Procurement Policy;

(F) whether the regulations have paperwork requirements;

(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

(H) such other matters as the Administrator determines would be useful; and

(3) report to Congress within 180 days after November 17, 1988, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

(A) the extent of the paperwork burden created by the Federal procurement process, and

(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the same time maintaining recordkeeping and reporting requirements necessary to ensure the integrity and accountability of the system.

(Pub. L. 93-400, §25, as added Pub. L. 100-679, §4, Nov. 17, 1988, 102 Stat. 4056; amended Pub. L. 101-510, div. A, title VIII, §807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

The National Aeronautics and Space Act of 1958, referred to in subsec. (c)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended, which is classified generally to chapter 26 (§2451 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1990—Subsec. (b)(2). Pub. L. 101-510 inserted before semicolon at end of cl. (A) “or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition”.

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, §809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(b)(2)), the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of

the Under Secretary of Defense for Acquisition and Technology.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 259, 423 of this title; title 10 sections 2302, 2323; title 15 section 638; title 42 section 8287; title 50 App. section 2154.

**§ 422. Cost Accounting Standards Board**

**(a) Establishment; membership; terms**

(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the “Cost Accounting Standards Board” (hereinafter referred to as the “Board”). The Board shall consist of 5 members, including the Administrator, who shall serve as Chairman, and 4 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

(A) two representatives of the Federal Government—

(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

(ii) one of whom shall be an officer or employee of the General Services Administration appointed by the Administrator of General Services; and

(B) two individuals from the private sector, each of whom shall be appointed by the Administrator and—

(i) one of whom shall be a representative of industry; and

(ii) one of whom shall be particularly knowledgeable about cost accounting problems and systems.

(2)(A) The term of office of each of the members of the Board, other than the Administrator for Federal Procurement Policy, shall be 4 years, except that—

(i) of the initial members, two shall be appointed for terms of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years;

(ii) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed; and

(iii) no individual who is appointed under paragraph (1)(A) of this subsection shall continue to serve after ceasing to be an officer or employee of the agency from which he or she was appointed.

(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(C) The initial members of the Board shall be appointed within 120 days after November 17, 1988.

**(b) Senior staff**

The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5 governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and

General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

**(c) Other staff**

The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5.

**(d) Detailed and temporary personnel**

(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 3109(b) of title 5 of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

**(e) Compensation**

Except as otherwise provided in subsection (a) of this section, the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (d)(1) of this section, shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or employee. Each member of the Board appointed from private life shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board. Individuals hired under subsection (d)(2) of this section may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5 for each day (including travel time) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5.

**(f) Cost accounting standards authority**

(1) The Board shall have the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States.

(2)(A) Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing